

**APRIL 2003 AGENDA**

SUBJECT Permanent Regulations Regarding Claims for Average Daily Attendance for Pupils Over the Age of 19 by Charter Schools and Charter Granting Entities.	X	ACTION
		INFORMATION
	X	PUBLIC HEARING

Recommendation:

Hold a public hearing on the proposed regulations regarding claims for average daily attendance for pupils over the age of 19 by charter schools and charter granting entities. Take action to adopt the proposed regulations.

Summary of Previous State Board of Education Discussion and Action

The State Board of Education commenced the permanent rulemaking process for these regulations at its January 2003, meeting.

Education Code Section 47612(b) as established by Assembly Bill (AB) 1115 (Chapter 78, Statutes of 1999) places specified limitations on pupils over the age of 19 who may be claimed for apportionment purposes by charter schools. [AB 1115 reorganized statutory provisions originally enacted by AB 544 (Chapter 34, Statutes of 1998).] The State Board of Education previously adopted regulations defining “satisfactory progress” in relation to these limitations, but did not adopt regulations further defining qualifications for the claiming of such pupils.

Summary of Key Issue(s)

An administrative determination by the California Department of Education has permitted a greater number of pupils over the age of 19 to be claimed for apportionment purposes than would be permitted under these regulations. Accordingly, the regulations are proposed to become operative beginning in 2003-04 to allow for an orderly transition. The Department of Finance and the Secretary for Education have requested approval of the proposed regulations.

Fiscal Analysis (as appropriate)

These regulations may result in a reduced level of expenditures for apportionments to charter schools. The expenditure reductions would occur in the funds dedicated to public schools under Proposition 98, all of which, by law must be expended each fiscal year. Thus, any reduced expenditures are more accurately characterized as expenditure shifts than as absolute savings.

Attachment(s)

- [Attachment 1](#): Title 5. Education, California State Board of Education, Notice of Proposed Rulemaking (pages 1-4)
- [Attachment 2](#): Proposed Regulations – Charter School Regular Average Daily Attendance (pages 1-2)
- [Attachment 3](#): Initial Statement of Reasons (pages 1-2)

STATE OF CALIFORNIA

GRAY DAVIS, Governor

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; P.O. Box 944272
Sacramento, CA 95814-5901



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Regular Average Daily Attendance for Charter Schools

[Notice published January 31, 2003]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The State Board will hold a public hearing beginning at **2:00 p.m. on Wednesday, April 9, 2003**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. All written comments must be received by the Regulations Adoption Coordinator no later than the close of the public hearing scheduled to start at **2:00 p.m. on Wednesday, April 9, 2003**. Requests to present oral statements at the public hearing or written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814-5901
E-mail: dstrain@cde.ca.gov
Telephone : (916) 319-0641
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority for these regulations is found in Education Code section 33031. Education Code section 33031 is the State Board's general authority to adopt rules and regulations for the government of the day and evening schools of the state that are not inconsistent with the requirement of statute.

References are made to Education Code sections 41420, 46301, 47612, and 47612.1. These statutes govern individuals who may be claimed for apportionment purposes as pupils in regular attendance in kindergarten and any of grades one through twelve, inclusive, in the public schools.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Education Code section 47612(b) states in pertinent part:

...To remain eligible for generating charter school apportionments, a pupil over 19 years of age shall be continuously enrolled in public school and make satisfactory progress towards award of a high school diploma...

In keeping with law, the State Board adopted a definition of “satisfactory progress,” which is contained in California Code of Regulations, Title 5, Section 11965(b). In pertinent part, this definition states:

...[Satisfactory progress (for non-special education pupils)] means uninterrupted progress (1) towards completion, with passing grades, of the substance of the course of study that is required for graduation from a non-charter comprehensive high school of the school district that authorized the charter school's charter, that the pupil has not yet completed, (2) at a rate that is at least adequate to allow the pupil to successfully complete, through full-time attendance, all of that uncompleted coursework within the aggregate amount of time assigned by the chartering agency for the study of that particular quantity of coursework within its standard academic schedule. If the chartering agency is not a school district having at least one non-charter comprehensive high school, the applicable high school graduation requirements and associated time assignments shall be those for the comprehensive high school(s) of the largest unified school district, as measured by average daily attendance, in the county or counties in which the charter school operates.

...[Satisfactory progress (for special education students)] means uninterrupted maintenance of progress towards meeting the goals and benchmarks or short-term objectives specified in his or her individualized education program...until high school graduation requirements have been met, or until the pupil reaches an age at which special education services are no longer required by law.

Under the provisions of Education Code section 56026, special education students are defined, in effect, to be students who have an impairment (as defined by federal law) that requires instruction, services, or both, which cannot be provided with modification of the regular school program and who are less than 22 years of age. An exception is provided for students whose 22nd birthday will occur during the months of January to June, inclusive, of an academic year; they are allowed to participate in a program for the whole of that academic year.

The specific language of Education Code section 47612(b) (“...To remain eligible...”) clearly expresses the intent and expectation that a pupil be enrolled in a public school in pursuit of a high school diploma as he or she leaves 19 years of age and becomes 20 years of age as one qualification of being “continuously

enrolled” for apportionment purposes. A specific exemption to the requirements of Education Code section 47612(b) is set forth in Education Code section 47612.1, which is taken into account in the regulations.

In order to ensure that the clear intent of Education Code section 47612(b) is met, the regulations preclude a charter-authorizing entity from claiming individuals as K-12 average daily attendance who are not claimable by a charter school under the regulations. Absent such a preclusion, which is not inconsistent with any provision of law relating to non-charter public schools, a charter-authorizing entity could claim the individuals and assign them to the charter school for instructional purposes, thus defeating the statute’s clear intent.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Affect on small businesses: The proposed amendments to the regulations do not have an affect on small businesses because they only provide clarity for charter schools for the purposes of claiming K-12 attendance for apportionment purposes. The proposed regulations do not impose additional workloads on small businesses or contractors funded by the Department.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Eileen Cubanski, Administrator
California Department of Education
Charter Schools Office
1430 N Street, Room 3800
Sacramento, CA 95814

E-mail: ecubansk@cde.ca.gov
Telephone: (916) 322-6029
FAX: (916) 322-1465

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to Regulations Adoption Coordinator.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Web site at <http://www.cde.ca.gov/regulations>

Title 5. EDUCATION**Division 1. State Department of Education****Chapter 11. Special Programs****Subchapter 19. Charter Schools****Article 1. Charter School Regular Average Daily Attendance**

Amend Section 11960 to read:

§11960. Regular Average Daily Attendance for Charter Schools.

(a) As used in Education Code section 47612, “attendance” means the attendance of charter school pupils while engaged in educational activities required of them by their charter schools, on days when school is actually taught in their charter schools. “Regular average daily attendance” shall be computed by dividing a charter school's total number of pupil-days of attendance by the number of calendar days on which school was actually taught in the charter school. For purposes of determining a charter school's total number of pupil-days of attendance, no pupil may generate more than one day of attendance in a calendar day.

(b) The State Superintendent of Public Instruction shall proportionately reduce the amount of funding that would otherwise have been apportioned to a charter school on the basis of average daily attendance for a fiscal year, if school was actually taught in the charter school on fewer than 175 calendar days during that fiscal year.

(c) Beginning in 2003-04, a pupil who is over the age of 19 years may generate attendance for apportionment purposes in a charter school only if the pupil was enrolled in a public school in pursuit of a high school diploma (or, if a student in special education, an individualized education program) while 19 years of age and, without a break in public school enrollment since that time, is enrolled in the charter school and is making satisfactory progress towards award of a high school diploma (or, if a student in special education, satisfactory progress in keeping with an individualized education program) consistent with the definition of satisfactory progress set forth in subdivision (b) of Section 11965. This subdivision shall not apply to a charter school program specified in Education Code section 47612.1. A charter school program as specified in Education Code section 47612.1 may be either:

- (1) the whole of a charter school, if the school has an exclusive partnership agreement with one or more of the programs specified in Education Code section 47612.1 and serves no other pupils; or

(2) an instructional program operated by a charter school that is exclusively dedicated to pupils who are also participating in one of the programs specified in Education Code section 47612.1, provided that arrangement is set forth in an exclusive partnership agreement between the charter school and one or more of the programs specified in Education Code section 47612.1.

(d) No individual who is ineligible to generate attendance for apportionment purposes in a charter school pursuant to subdivision (c) may be claimed as regular attendance for apportionment purposes by a local education agency that is authorized by law to grant charters. This subdivision shall not apply to claims other than claims for regular attendance for apportionment purposes.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 41420, 46301, 47612, and 47612.1, Education Code.

INITIAL STATEMENT OF REASONS

SECTION 11960. Regular Average Daily Attendance for Charter Schools.

SPECIFIC PURPOSE OF THE REGULATIONS

The proposed regulations clarify the requirements for individuals to be eligible for claiming as K-12 average daily attendance when the individuals are over the age of 19.

NECESSITY/RATIONALE

The provisions of Education Code section 47612(b) have been implemented under an administrative interpretation not codified in regulations, thus demonstrating that the statute *per se* is in need of clarification. Regulations are the appropriate manner in which to clarify statutory requirements that control potentially substantial amounts of state funding.

SECTION 11960(c)

Clarifies that, beginning in 2003-04, a pupil who is over the age of 19 years may generate attendance for apportionment purposes in a charter school only if:

- (1) the pupil was enrolled in a public school in pursuit of a high school diploma (or, if a student in special education, an individualized education program) while 19 years of age and
- (2) without a break in public school enrollment since that time, the pupil is enrolled in the charter school and is making satisfactory progress towards award of a high school diploma (or, if a student in special education, satisfactory progress in keeping with an individualized education program) consistent with the definition of satisfactory progress elsewhere set forth in regulation.

This subdivision makes clear that it does not apply to a charter school program specified in Education Code Section 47612.1.

This subdivision defines a charter school program as specified in Education Code Section 47612.1 as being either:

- (1) the whole of a charter school, if the school has an exclusive partnership agreement with one or more of the programs specified in Education Code Section 47612.1 and serves no other pupils; or
- (2) an instructional program operated by a charter school that is exclusively dedicated to pupils who are also participating in one of the programs specified in Education Code Section 47612.1, provided that arrangement is set forth in an exclusive partnership agreement between the charter school and the program or programs specified in Education Code Section 47612.1.

SECTION 11960(d)

This subdivision specifies that no individual who is ineligible to generate attendance for apportionment purposes in a charter school pursuant to subdivision (c) may be claimed as regular attendance for apportionment purposes by a local education agency that is authorized by law to grant charters. This provision, which is not inconsistent with statute, is needed to ensure that charter granting entities do not claim individuals for ADA purposes who are ineligible under the provisions of subdivision (c) then assign them to charter schools for instructional purposes. Such an outcome would defeat the clear intent of the statute.

The subdivision clarifies that its restrictions apply only to claims for regular average daily attendance. Thus, statutorily separate programs, such as adult education, would not be affected in any way by these regulations. This provision avoids any confusion with respect to the authority of local education agencies that grant charters to claim individuals for such separate programs in accordance with applicable law.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS.

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

The State Board was not presented with other viable alternatives to the adoption of these regulations.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

The proposed regulations would not have a significant adverse economic impact on any business because they only provide clarity for charter schools for the purposes of claiming K-12 attendance for apportionment purposes. The proposed regulations do not impose additional workloads on small businesses or contractors funded by the Department.